

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The application of SAN DIEGO GAS & ELECTRIC (U 902 E) for approval of servicing agreement between the State of California Department of Water Resources ("DWR") and SDG&E Company Pursuant to Chapter 4 of the Statutes of 2001 (Assembly Bill 1 of the First 2001-2002 Extraordinary Session).

Application 01-06-039  
(Filed June 22, 2001)

**OPINION APPROVING THE AMENDED SERVICING AGREEMENT  
BETWEEN SAN DIEGO GAS & ELECTRIC COMPANY  
AND CALIFORNIA DEPARTMENT OF WATER RESOURCES**

**Summary**

On March 29, 2002, San Diego Gas & Electric Company (SDG&E) filed a petition for modification of Decision (D.) 01-09-013. D.01-09-013 was the decision which approved the Servicing Agreement between the California Department of Water Resources (DWR) and SDG&E.<sup>1</sup>

SDG&E's petition for modification seeks Commission approval of certain revisions to the Servicing Agreement as a result of changes ordered in D.01-09-013, and to make the Servicing Agreement consistent with the Rate

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<sup>1</sup> The Servicing Agreement sets forth the terms and conditions under which SDG&E will provide the transmission and distribution of DWR-purchased electricity, as well as billing, collection, and related services on behalf of DWR. The servicing agreement also addresses DWR's compensation to SDG&E for providing those services.

Agreement between DWR and the Commission that was approved in D.02-02-051, and with the revisions required to include remittances by SDG&E to DWR for imbalance energy as ordered in D.02-02-052.

Today's decision approves the First Amended and Restated Servicing Agreement (Amended Servicing Agreement) entered into between SDG&E and DWR, and the petition for modification of D.01-09-013 is granted as set forth in this decision. A copy of the Amended Servicing Agreement is attached to this decision as Appendix B.<sup>2</sup>

### **Background**

In January 2001, in response to the energy crisis facing California, the Legislature gave DWR the authority to purchase electricity and sell it to the retail customers of California's electric utilities. This authority was provided in Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB1X).

In March 2001, the Commission ordered SDG&E to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (D.01-03-081.) This arrangement was formalized in the Servicing Agreement that was entered into between SDG&E and DWR, and approved with certain modifications in D.01-09-013.

As a result of D.01-09-013, D.02-02-051, and D.02-02-052, SDG&E and DWR discussed and negotiated amendments and restatements to the Servicing Agreement. These changes are reflected in the Amended Servicing Agreement which the two parties signed on March 29, 2002.

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<sup>2</sup> Appendix B also includes SDG&E's petition for modification of D.01-09-013.

In its petition for modification of D.01-09-013, SDG&E seeks to have the Commission resolve its petition on an expedited basis so as to facilitate the expeditious issuance of the bonds by DWR. An executed copy of the Amended Servicing Agreement between DWR and SDG&E was attached to SDG&E's petition as Attachment A.

SDG&E requests that the Commission grant SDG&E's petition and approve the Amended Servicing Agreement at the April 22, 2002 Commission meeting. A ruling shortening the time for parties to respond to the petition was issued on April 4, 2002. No one filed any response to SDG&E's petition.

### **Summary of the Changes to the Amended Servicing Agreement**

The Amended Servicing Agreement has been compared to the Servicing Agreement that was approved in D.01-09-013. Appendix A of this decision lists the location of the amendments and restatements to the Amended Servicing Agreement.

According to SDG&E's petition, the changes to the Amended Servicing Agreement are needed to conform the agreement to certain modifications ordered in D.01-09-013, and actions taken in D.02-02-051, which adopted the Rate Agreement between DWR and this Commission, and D.02-02-052, which allocated DWR's 2001-2002 revenue requirement among the customers in the various service territories in California.<sup>3</sup> Among the changes to the Amended Servicing Agreement are the following:

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<sup>3</sup> SDG&E notes that it has also been in discussions with DWR regarding an amendment to the Servicing Agreement related to DWR's Demand Bidding Program. However, such an amendment is not being submitted to the Commission at this time.

- The Amended Servicing Agreement contains language changes that primarily relate to definitional changes, deletion of the dual billing option, unbundling the DWR Charges from a single charge into separate Bond and Power Charges, and inclusion of remittances by SDG&E to DWR for imbalance energy delivered to SDG&E's customers.
- Provisions have been added to collect the Bond Charges, Exit Fees, and any other applicable DWR Charge approved by the Commission from electric service providers.
- The Amended Servicing Agreement acknowledges the fact that the parties agree to modify the Servicing Agreement once the bond issuance has been approved and once more specific information is known.
- Recognizing that the Bond Charge will be based on total connected load, and not just on the net short provided by DWR.

SDG&E requests that D.01-09-013 be modified by adopting the Amended Servicing Agreement, and by adding new Finding of Fact 27 and new Conclusion of Law 13, and revising Ordering Paragraph 1.

### **Discussion**

In deciding whether we should approve the Amended Servicing Agreement, a review of the three decisions cited by SDG&E are in order to determine if the changes conform to the decisions.

D.01-09-013 approved the Servicing Agreement, along with the revisions contained in Ordering Paragraphs 3, 4 and 5 of that decision. The changes contained in the Amended Servicing Agreement conform to the revisions ordered in D.01-09-013.

The Rate Agreement entered into between the Commission and DWR, and approved in D.02-02-051, established separate Bond Charges and Power Charges. The Rate Agreement recognizes that the Bond Charge for each customer will be based on the aggregate amount of power sold to the customer by an electrical corporation, DWR, and an electric service provider (ESP). D.02-02-051 acknowledged that the Rate Agreement allows the Commission to impose Bond Charges on ESP power only after the Commission issues an order providing for such charges, and the order becomes final and unappealable. D.02-02-051 deferred to a future proceeding the issue of whether the power sold to ESPs should be subject to the Bond Charges.

The changes to the Amended Servicing Agreement reflect the unbundling of the DWR Charges into separate Bond Charges and Power Charges, that the Bond Charges be based on total connected load, that the Bond Charges include any exit fee that may be imposed by the Commission on the customers of ESPs, and that the servicing agreement may be amended to facilitate the calculation and collection of an authorized exit fee.

In D.02-02-052, the decision which allocated DWR's revenue requirement among the three major California electric utilities, the Commission ordered that the utilities remit the total amount of DWR energy, including imbalance energy. The Amended Servicing Agreement incorporates that directive.

All of the amendments and restatements that have been incorporated into the Amended Servicing Agreement are consistent with the changes and directives ordered in D.01-09-013, D.02-02-051, and D.02-02-052. D.01-09-013 should be modified as follows:

- (1) New Finding of Fact 27 should be added to read as follows:  
"SDG&E and DWR have negotiated the First Amended and

Restated Servicing Agreement in response to the direction given in D.01-09-013, D.02-02-051, and D.02-02-052.”

- (2) New Conclusion of Law 13 should be added to read as follows: “SDG&E’s and DWR’s proposed amendments to the approved Servicing Agreement are reasonable and in the public interest, and should be adopted.”
- (3) Ordering Paragraph 9 should be added to read as follows: “The First Amended and Restated Servicing Agreement that was executed by and between the DWR and SDG&E on March 29, 2002, is approved.”

The Amended Servicing Agreement, which is attached to this decision as Appendix B, is approved.

### **Comments On Draft Decision**

Public Utilities Code Section 311(g)(1) generally requires that the draft decision be served on all parties, and be subject to at least 30 days of public review and comment prior to a vote of the Commission. However, the comment period may be waived “in an uncontested matter where the decision grants the relief requested.” (Rules of Practice and Procedure, Rule 77.7(f).) Since no one filed a response to SDG&E’s petition for modification of D.01-09-013, the comment period is waived.

### **Findings of Fact**

1. SDG&E filed a petition for modification of D.01-09-013 on March 29, 2002.
2. SDG&E’s petition seeks Commission approval of certain revisions to the Servicing Agreement as a result of the changes ordered in D.01-09-013, and to make it consistent with the Rate Agreement approved in D.02-02-051 and with the directive regarding imbalance energy in D.02-02-052.
3. No one filed any response to SDG&E’s petition.

4. Appendix A of this decision lists the location of the amendments and restatements to the Amended Servicing Agreement.

**Conclusions of Law**

1. All of the amendments and restatements to the Amended Servicing Agreement are consistent with the changes and directives ordered in D.01-09-013, D.02-02-051, and D.02-02-052.
2. D.01-09-013 should be modified as specified in this decision.
3. The Amended Servicing Agreement should be approved.
4. The comment period on the draft decision is waived.

**O R D E R****IT IS ORDERED** that:

1. The petition for modification of Decision (D.) 01-09-013, filed by San Diego Gas & Electric Company (SDG&E) on March 29, 2002, is granted as set forth below.
  - (a) D.01-09-013 is modified by adding new Finding of Fact 27, which shall read as follows: “SDG&E and DWR have negotiated the First Amended and Restated Servicing Agreement in response to the direction given in D.01-09-013, D.02-02-051, and D.02-02-052.”
  - (b) D.01-09-013 is modified by adding new Conclusion of Law 13, which shall read as follows: “SDG&E’s and DWR’s proposed amendments to the approved Servicing Agreement are reasonable and in the public interest, and should be adopted.”
  - (c) D.01-09-013 is modified by adding new Ordering Paragraph 9, which shall read as follows: “The First Amended and Restated Servicing Agreement that was

executed by and between the DWR and SDG&E on  
March 29, 2002, is approved.”



2. The “First Amended and Restated Servicing Agreement,” a copy of which is attached to this decision as Appendix B, is approved.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**

Location of Amendments and Restatements to the “First Amended and  
Restated Servicing Agreement”

Page	Location Of Change
Cover Page	Title
(i)	Pagination
1	Title, introductory paragraph, Recitals D-G.
2	1.3.5.
3	1.9., 1.9.3., 1.9.7., 1.20.
4	1.26.-1.29., 1.32.3., 1.32.7., 1.34.5.
5	1.40., 1.46.5
6	1.47.5., 1.59.
7-8	2.1., 2.2.
9	2.3., 3.1., 3.2.
10	3.4.
11	4.3.
12	5.1.
13	5.3.
16	7.1.
18	7.3.(b), 8.2.
21	10.(a)
22	13.2.
27	14.14.(a) DWR contact
28	14.16.
SA 1-2	2.1., 2.2.
SA 1-3	2.4.
A-1	SDG&E address & facsimile
A-2	SDG&E addresses & facsimile
E-1	1., 2.

**(END OF APPENDIX A)**

## **APPENDIX B**